

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability )  
company, )

Plaintiff, )

vs. )

KEVIN SYKES-BONNETT and SYKED )  
ECU TUNING INCORPORATED, a )  
Washington corporation, )

Defendants. )

NO. 3:17-cv-05760-BHS

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. The parties have therefore agreed to the following Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

PROTECTIVE ORDER - 1

Heurlin, Potter, Jahn, Leatham, Holtmann & Stoker, P.S.  
211 E. McLoughlin Boulevard, Suite 100  
PO Box 611  
Vancouver, WA 98666-0611  
(360) 750-7547

2. "CONFIDENTIAL" AND "HIGHLY CONFIDENTIAL" MATERIAL

2.1 "Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: business records and employee files; documents relating to expertise and knowledge, including automotive tuning data and data related to other types of vehicles; documents relating to undisclosed advertising and marketing; management communications; pricing information; agreements with employees and non-parties; and technical information about a party's products or anticipated products.

2.2 "Highly Confidential" material shall include any document, material, or information otherwise meeting the definition of "Confidential," the disclosure of which to another party or non-party the disclosing party reasonably believes would likely result in competitive, commercial, financial, or other harm to the disclosing party or its clients or potential clients. "Highly confidential" material may include, without limitation, proprietary technical information in the nature of hardware design documents, source code; proprietary software; license key generators, and computer passwords.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained by a receiving party at a location and in a secure manner  
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of counsel  
7 to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the receiving  
9 party to whom disclosure is reasonably necessary for this litigation;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation  
11 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of  
14 confidential material, provided that counsel for the party retaining the copy or imaging service  
15 instructs the service not to disclose any confidential material to third parties and to immediately  
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
18 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
19 A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

23 (g) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information;

25 (h) mediators or discovery masters (and their support staff) assisting in the above-  
captioned action; and

1 (i) any other person designated by written agreement of the parties and the disclosing  
2 party, or by order of the Court.

3 4.3 Disclosure of "HIGHLY CONFIDENTIAL" Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any Highly Confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of counsel  
7 to whom it is reasonably necessary to disclose the information for this litigation provided those  
8 employees are not also employees of the receiving party;

9 (b) experts and consultants (including computer forensic examiners and custodians) to  
10 whom disclosure is reasonably necessary for this litigation and who have signed the  
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (c) the court, court personnel, and court reporters and their staff;

13 (d) the author or recipient of a document containing the information or a custodian or  
14 other person who otherwise possessed or knew the information;

15 (e) mediators or discovery masters (and their support staff) assisting in the above-  
16 captioned action; and

17 (f) any other person designated by written agreement of the parties and the disclosing  
18 party, or by order of the Court, where such disclosure is reasonably necessary for this litigation  
19 and only after the above named persons have signed the "Acknowledgment and Agreement to Be  
20 Bound" (Exhibit A).

21 4.4 Filing Confidential Material. Before filing confidential material or discussing or  
22 referencing such material in court filings, the filing party shall confer with the designating party  
23 to determine whether the designating party will remove the confidential designation, whether the  
24 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
25

1 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
2 standards that will be applied when a party seeks permission from the court to file material under  
3 seal.

#### 4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
6 or non-party that designates information or items for protection under this agreement must take  
7 care to limit any such designation to specific material that qualifies under the appropriate  
8 standards. The designating party must designate for protection only those parts of material,  
9 documents, items, or oral or written communications that qualify, so that other portions of the  
10 material, documents, items, or communications for which protection is not warranted are not  
11 swept unjustifiably within the ambit of this agreement.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
13 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
14 unnecessarily encumber or delay the case development process or to impose unnecessary  
15 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a  
16 designating party's attention that information or items that it designated for protection do not  
17 qualify for protection, the designating party must promptly notify all other parties that it is  
18 withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
20 agreement (see, e.g., paragraph 5.2(a) below), or as otherwise stipulated or ordered, disclosure or  
21 discovery material that qualifies for protection under this agreement must be clearly so  
22 designated before or when the material is disclosed or produced.

23 (a) Information in documentary form: (e.g., paper or electronic documents and deposition  
24 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the  
25 designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to  
each page that contains confidential material. If only a portion or portions of the material on a

1 page qualifies for protection, the producing party also must clearly identify the protected  
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties  
4 must identify on the record, during the deposition, hearing, or other proceeding, all protected  
5 testimony, without prejudice to their right to so designate other testimony after reviewing the  
6 transcript. Any party or non-party may, within fifteen days after receiving a deposition transcript,  
7 designate portions of the transcript, or exhibits thereto, as confidential.

8 (c) Other tangible items: the producing party must affix in a prominent place on the  
9 exterior of the container or containers in which the information or item is stored the word  
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." If only a portion or portions of the  
11 information or item warrant protection, the producing party, to the extent practicable, shall  
12 identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
14 designate qualified information or items does not, standing alone, waive the designating party's  
15 right to secure protection under this agreement for such material. Upon timely correction of a  
16 designation, the receiving party must make reasonable efforts to ensure that the material is  
17 treated in accordance with the provisions of this agreement.

## 18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
20 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
24 original designation is disclosed.

25 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
regarding confidential designations without court involvement. Any motion regarding

1 confidential designations or for a protective order must include a certification, in the motion or in  
2 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
3 conference with other affected parties in an effort to resolve the dispute without court action. The  
4 certification must list the date, manner, and participants to the conference. A good faith effort to  
5 confer requires a face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
7 intervention, the designating party may file and serve a motion to retain confidentiality under  
8 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
9 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
10 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
11 other parties) may expose the challenging party to sanctions. All parties shall continue to  
12 maintain the material in question as confidential until the court rules on the challenge.

#### 13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 14 LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation that compels  
16 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
17 "HIGHLY CONFIDENTIAL" that party must: (a) promptly notify the designating party in  
18 writing and include a copy of the subpoena or court order; (b) promptly notify in writing the  
19 party who caused the subpoena or order to issue in the other litigation that some or all of the  
20 material covered by the subpoena or order is subject to this agreement. Such notification shall  
21 include a copy of this agreement; and (c) cooperate with respect to all reasonable procedures  
22 sought to be pursued by the designating party whose confidential material may be affected.

#### 23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
25 material to any person or in any circumstance not authorized under this agreement, the receiving  
party must immediately (a) notify in writing the designating party of the unauthorized



disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL


When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO ORDERED.

DATED: 21 May 2018

  
The Honorable Benjamin H. Settle  
United States District Judge



## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *HP Tuners, LLC v. Kevin Sykes-Bonnett and Syked ECU Tuning Incorporated*, Case No. 3:17-cv-05760-BHS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_